

include equivalent features, whether such equivalents are now known, or will become known in the future.

REMARKS

Present Application

After provisional election of claims in response to the restriction requirement, and provisional cancellation of claims with traverse, claims 1 – 9, 13 – 14, 18 – 19, 22 – 27, and 36 – 37 are now pending in this application. Claims 10 – 12, 15 – 17, 20 – 21, 28 – 35, and 38 – 46 have been canceled herein, without prejudice and with traverse, in response to the Examiner's restriction requirement as discussed above. It is asserted that no new matter has been added.

Response to Examiner's Restriction Requirement

The Examiner has issued a restriction requirement, which requires election to one of nine groups of claims, which the Examiner asserts are distinct from each other.

The groups of claims are characterized by the Examiner as set forth below:

- I. Claims 1 – 9, 13 and 14, 22 – 27, 36 – 37, along with one method of use which Applicant should select from the following: Claim 11, or Claim 16, or Claims 18 and 19, or Claims 20 and 21, or Claims 28 and 29, or Claims 30 – 32, or Claims 33 – 35, classified in various classes and subclasses.
- II. The remaining methods of use provided in Group 1 (since one of the methods of use is grouped in Group 1), classified in various classes and subclasses.
- III. Claim 38 drawn to compound (1h) and claim 39 drawn to a process of preparing the compound, classified in various classes and subclasses.

- IV. Claim 40 drawn to intermediate (1c) and claim 41 drawn to a process of preparing the intermediate, classified in various classes and subclasses.
- V. Claim 42 drawn to a process of preparing the intermediate (1e), classified in various classes and subclasses.
- VI. Claim 43 drawn to a process of preparing the intermediate(1e), classified in various classes and subclasses.
- VII. Claim 44, drawn to intermediate (1f) and claim 45, drawn to a process for preparing the intermediate, classified in various classes and subclasses.
- VIII. Claim 46 drawn to a process of preparing a compound of formula (1r).
- IX. Claims 10, 12, 15 and 17, which are drawn to a combination of compositions and methods of use.

The Examiner asserts that claims 1 – 46 “are generic to a plurality of disclosed patentably distinct species” and that “Applicant is required under 35 U.S.C. 121 to elect a single disclosed species of the instant compounds, even though this requirement is traversed” (page 5, paragraph 3 of the Office Action). Applicants while respectfully traversing the restriction for the reason set forth below, therefore provisionally elect prosecution of the claims in Group I selecting Claims 18 and 19 to be examined along with claims 1 – 9, 13 – 14, 22 – 27, and 36 – 37.

The Examiner asserts that embodiments in Groups I, IV and VII are related as mutually exclusive species in an intermediate-final product relationship (page 3 of the Office Action), embodiments in Groups I, V and VI are related as process of making and product made wherein the product claimed can be made by another and materially

different process (page 4 of the Office Action), embodiments in Groups I and II are related as product and process of use wherein the product as claimed can be practiced with another and materially different product (page 4 of the Office Action), and embodiments in Group IX depend upon the patentability of dosage and kind of specific ingredients and their activity functioning together (page 4 of the Office Action). The Examiner further argues that each embodiment has acquired a separate status in the art because of "recognized divergent subject matter" (page 5 of the Office Action).

Applicants respectfully fundamentally disagree with the restriction requirement, and argue that the inventions are appropriately included in a single application as the claims recite interrelated subject matter, which should be the overriding concern in determining the propriety of the restriction requirement. Applicants respectfully asserts that examination of these groups of claims in combination would not be unduly prolonged or burdensome. In view of the foregoing, Applicants respectfully request the Examiner to reconsider and withdraw the restriction requirement.

Applicants understand their duty to amend the inventorship of the application in compliance with 37 C.F.R. §1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application.

CONCLUSIONS

Accordingly, it is respectfully submitted that the claims under consideration are clearly patentable over the references of record. It is submitted that the above-identified patent application is in condition for allowance. Early notification of the allowability of the pending claims is courteously solicited.

PETITION FOR EXTENSION OF TIME AND FEES

A one month extension of time is sought in filing this response. The fee for such one month extension is submitted herewith. The Assistant Commissioner, however, is authorized to charge payment of any fees that may be required 37 C.F.R. §1.16 in connection with the paper(s) transmitted herewith, or credit any overpayment of the same, to Deposit Account No. 033975.

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Respectfully submitted,


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